



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

December 9, 2023

BY ECF

Hon. John G. Koeltl
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Kunstler et al. v. Central Intelligence Agency et al.*, No. 22 Civ. 6913 (JGK)

Dear Judge Koeltl:

Pursuant to the Court's order of November 16, 2023 (ECF No. 72), I write respectfully on behalf of defendants the Central Intelligence Agency ("CIA") and Michael R. Pompeo, the former Director of the CIA (together, the "Federal Defendants"), with respect to the proposed amended allegations included in plaintiffs' letter of November 30, 2023 (ECF No. 73). As previewed at the oral argument on November 16, the proposed amendment resolves one of the Federal Defendants' arguments in its motion to dismiss: that plaintiffs' allegation of the illegality of the claimed searches of their electronic devices is conclusory. *See* ECF No. 35 at 20-22; ECF No. 42 at 12-13. Thus, assuming the Court accepts plaintiffs' amended allegation, the Federal Defendants withdraw this argument. However, it remains the Government's position that plaintiffs' allegations regarding the searches of their electronic devices must nonetheless be dismissed because plaintiffs lack standing to sue the CIA for injunctive relief and because they have not alleged facts demonstrating that the CIA controlled and directed the actions of the foreign persons who supposedly conducted the searches at issue. *See* ECF No. 35 at 6-11, 22-24; ECF No. 42 at 1-3, 14-15.

I thank the Court for its consideration of this submission, and apologize for filing it one day late, due a family commitment of the undersigned yesterday.

Respectfully,

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cc: All parties (by ECF)